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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/840,754

04/23/2001

Vasily A. Topolkaev

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04/30/2004

GENERAL NUMBER 00757
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EXAMINER

FERGUSON, LAWRENCE D

ART UNIT

PAPER NUMBER

1774

DATE MAILED: 04/30/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

AS

Office Action Summary	Application No. 09/840,754	Applicant(s) TOPOLKARAEV ET AL.	
	Examiner Lawrence D Ferguson	Art Unit 1774	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. §.133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 February 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5, 16, 20, 21 and 23-29 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5, 16, 20-21 and 23-29 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

1. This action is in response to the amendment mailed February 20, 2004. Claims 1, 20-21 and 23-29 were amended rendering claims 1-5, 16, 20-21 and 23-29 pending.

Claim Rejections – 35 USC § 103(a)

2. Claims 1-5, 16, 20-21 and 23-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kroll et al. (U.S. 6,432,547) for reasons previously stated in the Office Action submitted on November 26, 2003.

Response to Arguments

3. Applicants arguments of rejection under 35 USC 103(a) as being unpatentable over Kroll et al. (U.S. 6,432,547) have been considered but are unpersuasive. Applicant argues modifying the film of Kroll by stretching does not meet the limitation of instant claim 1. Applicant states *In re Rose* is related to a lumber package comprising bundles having a plurality of strips of lumber and the present claims are not concerned with the change in size of the component *per se* since, in use, the size of the claimed film would be the same as the size of the Kroll film. Applicant argues the present claims are directed to a stretched film that provides breathability greater than about 2500 g/m²/day,

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which is patentable over Kroll. Examiner respectfully disagrees because Kroll teaches the breathable film has a water vapor transmission rate of at least $100 \text{ g/m}^2/\text{day}$ (column 1, lines 21-32) and more preferably from about 1000 to $2000 \text{ g/m}^2/\text{day}$ or higher (column 2, line 62 through column 3, line 1). Examiner maintains that pulling or spreading out the film of Kroll to its' full extent or to a greater size is within the level of ordinary skill in the art. Applicant argues the instantly stretched film provides an improved breathability of greater than about $2500 \text{ g/m}^2/\text{day}$; however, at least $100 \text{ g/m}^2/\text{day}$ and more preferably from about 1000 to $2000 \text{ g/m}^2/\text{day}$ or higher meets this claim limitation.

4. THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

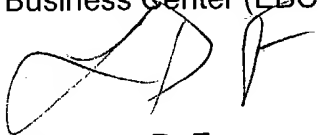
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Conclusion

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lawrence Ferguson whose telephone number is 571-272-1522. The examiner can normally be reached on Monday through Friday 9:00 AM – 5:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cynthia Kelly, can be reached on 571-272-1526. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Lawrence D. Ferguson
Examiner
Art Unit 1774

CYNTHIA H. KELLY
SUPERVISOR, EXAMINER
TECHNICAL CENTER 1700

